

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-12, 14 and 15 are now in the application and claims 1 and 15 are independent. The Office Action dated September 2, 2011 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the amendments and the following remarks. As Examiner Edwards will recall, the recitation that the location of the discoid center of the lid is adjacent to the mouth roll so as to create a space between the lid rim and the discoid center, as is now recited in new claim 15, was suggested by the Examiner and his Supervisor during the Examiner Interview which occurred on August 22, 2011.

Claim Rejections – 35 U.S.C. § 103 based on Wommelsdorf

Claims 1-3, 6, 9, 10 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt. Claims 4, 5, 7, 8 and 12 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt and Wanderer. Claim 11 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Wommelsdorf in view of Schmidt and Bacon. Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and respectfully traverse the rejection. A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the cited references must teach or suggest each and every element in the claims. See MPEP § 706.02(j) and MPEP §§ 2141-2144.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that new independent claim 15 recites a combination of elements in a cup package including that "the location of the discoid center of the lid being adjacent to the mouth roll so as to create a space between the lid rim and the discoid center." Applicants respectfully submit that this combination of elements as set forth in independent claim 15 is not disclosed or made obvious by the prior art of record, including Wommelsdorf, Schmidt, Wanderer and Bacon.

Wommelsdorf fails to show or suggest a lid for the cup 1. Therefore, because there is no lid in Wommelsdorf, the reference does not show such a lid wherein the location of the discoid center of the lid is adjacent to the mouth roll so as to create a space between the lid rim and the discoid center.

For a showing of a lid, the rejection turns to Schmidt, which includes cover 2 formed by plate 3, as seen in Figures 2-6. However, the plate 3 can be seen to be attached to portion 4 by means of parts 10 and 11 of lower rim 5 in such a manner that upon application of pressure on folded portions of ring 7, as described at column 2, lines 62-67, a "reliable connection" is formed so that there is no space "between the lid rim and the discoid center" as claimed. Thus, Schmidt cannot remedy the defects of Wommelsdorf.

Wanderer was cited to show mouth rolls of a lid 16, but the lid is formed entirely of "thermoplastic material" and, once again, there is no space "between the lid rim and the discoid center" as claimed. Thus, Wanderer cannot remedy the defects of Wommelsdorf.

And finally, Bacon was cited to show techniques for bending the mouth of a container so as to form a mouth roll. However, Bacon only discloses dies 50 and sleeves 62, 64 and 66 for forming a rolled lip and fails to show or suggest, *inter alia*, providing the paperboard cup of Wommelsdorf with a cup and lid both formed of a discoid center and surrounding frame expanding conically upwards, and wherein the location of the discoid center of the lid being adjacent to the mouth roll so as to create a space between the lid rim and the discoid center. Thus, Bacon cannot remedy the defects of Wommelsdorf as discussed above.

Applicants respectfully submit that the combination of elements as set forth in independent claim 15 is not disclosed or made obvious by the prior art of record, including Wommelsdorf, Schmidt, Wanderer and Bacon, for the reasons explained above. Accordingly, allowance of new claim 15 is respectfully requested.

With respect to claims 1-12 and 14 Applicants respectfully request reconsideration of the prior art rejections, and provides the following response to the Examiner's arguments presented in section #6 of the Office Action, beginning on page 10.

Firstly, the Examiner argues a combination of Wommelsdorf and Schmidt "in order to allow nesting of the lid." To the contrary, there is no showing or suggestion of the nesting of lids in either Wommelsdorf or Schmidt. Wommelsdorf is only directed to the nesting of cups, not lids, as Wommelsdorf does not even have a lid. Applicants do not deny the nestability of the

cups in Figure 2 of Wommelsdorf, but that is useful for cups having a considerable height and volume, but is not disclosed as a concern for lids.

Thus, Wommelsdorf only describes a conical cup with a mouth roll. There is no description of a lid, or suggestion for a lid, as the cup therein is intended for being dispensed from a beverage machine. Should one of skill in this art decide to provide a lid, the choices would be many, including heat-sealed lids or lids with a snap fit locking over the mouth roll. Thus, by itself, Wommelsdorf lacks many of the features recited in claim 1.

And the lid 2 of Schmidt is not shown as nestable, nor is there any suggestion of nestability. Indeed, it would appear from Figure 1 of Schmidt that the upright mantle is not nestable. Nor has the rejection presented any factual evidence of nestability for shallow lids, or established why one skilled in this art would contemplate nestability for lids.

Secondly, the Examiner asserts that Schmidt shows a lid which has a conical frame. To the contrary, it appears from Figures 1, 6, 7 and 8 of Schmidt that the finished frame is not conical. In the instant invention, the frame of the lid is conical to allow nesting with the (similarly) conical cup, the ensuing adjacent positioning of the mouth rolls, and compression and friction keeping the nested lid in place. Figure 6 of Schmidt does not show a conical lid expanding conically upwards for nesting as claimed.

In other words, Schmidt describes a lid with a surrounding frame. The frame, however, is not conical. And the mouth roll extends inwardly, not outwardly as claimed in the instant invention. The container 1 shown in Figure 1 of Schmidt is not conical and has no mouth roll. There is no showing or suggestion in Schmidt of a cup and a lid having the same basic structures, much less a showing of both the cup and the lid of being conically expanding, being attached by friction, and both having an outwardly extending mouth roll facilitating opening as well as closing of the cup package. In order to establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385, 1395 (2007) (citing *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

In the instant application, the outward extending direction of the mouth roll facilitates the nesting relationship. In Schmidt it might be possible to stack the lids one on top of another, but the inwardly extending mouth roll would prevent the nested relationship. Thus, for the above succinctly stated reasons, it is respectfully submitted a *prima facie* case of obviousness of claim 1 has not been established.

Neither Wanderer nor Bacon, as discussed above, can remedy the defects of Wommelsdorf. Thus, Applicants respectfully submit that the combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Wommelsdorf, Schmidt, Wanderer and Bacon, for the reasons explained above. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

With regard to dependent claims 2-12 and 14, Applicants submit that dependent claims 2-12 and 14 depend, either directly or indirectly, from independent claim 1 which is allowable for the reasons set forth above, and therefore claims 2-12 and 14 are allowable based at least on their dependence from claim 1. Reconsideration and allowance thereof are respectfully requested.

Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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